



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

June, 2004

Scheduled for committee review
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Statehouse Room #116

Reference
XXVI IAB No. 23(05/12/04)
XXVI IAB No. 24(05/26/04)

HIGHLIGHTS IN THIS ISSUE:

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ADMINISTRATIVE SERVICES DEPARTMENT

10:30

Parking rules, IAB Vol. XXVI, No. 24, ARC 3247B,
ADOPTED.

The department completes a general revision of the parking rules for the capitol complex. Fines are raised from five to ten dollars and late payment fees are newly added, at and additional twenty dollars. Habitual violators (defined as persons with six or more violations in the past twelve months) and persons with delinquent fines may be towed with no additional notice. The rules define the complex area as essentially the capitol, the surrounding state office buildings and the appurtenant property; it does not include state property in separated locations (e.g.: the Ankeny campus).

Parking areas regulated by these provisions are limited to those under the control of the executive branch of government. Lots and spaces are assigned to persons with disabilities, general

visitors, and employees. Assignment of parking for legislative employees is regulated by the House and Senate. Every executive branch employee must have a decal permanently affixed to the vehicle. An access card to gain entry into the assigned lot may also be needed. If the access card is lost a replacement fee is required. The new rules clarify that legislative personnel do not use decals; instead using dashboard-mounted placards.

Enforcement of the parking rules is primarily through Iowa State Patrol District 16, located in the capitol complex. Each officer has some discretion when enforcing the rules. An officer may issue a direct order to a vehicle operator, issue a citation or have a vehicle removed.

ADMINISTRATIVE SERVICES DEPARTMENT

10:30

Payroll deductions for insurance, IAB Vol. XXVI, No. 24,
ARC 3365B, ADOPTED.

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House File 2262 requires that state employee payroll deductions be established whenever 500 or more state employees request the deduction to purchase insurance from the same company; essentially, the state will collect the premiums on behalf of the company. In essence this replaces Code language that was repealed in 2002 (the old language required only 250 employees). Rules for the old program still appear as part of the Department of Revenue and Finance.

Under the proposed rules companies currently participating under the old program are "grandfathered" in for the first twelve months. The rules are similar to those promulgated by the Revenue Department, simply providing a greater level of detail. Participation is limited to insurance coverage that is not otherwise offered through the state, such as: health and dental; term life; and long-term sickness or disability.

AGRICULTURE DEPARTMENT

No Rep

Scrapie control, IAB Vol. XXVI, No. 24, ARC 3376B, ADOPTED.

Scrapie is a fatal, degenerative disease affecting the central nervous system of sheep and goats. It is among a number of diseases classified as transmissible spongiform encephalopathies (TSE) and is related to mad cow disease. First recognized as a disease of sheep in Great Britain and other countries of Western Europe more than 250 years ago, this disease has been reported throughout the world. Only Australia and New Zealand are free of this disease.

These rules are intended to implement a scrapie control and eradication program developed by the United States Department of Agriculture (USDA). Under this program all sexually intact sheep and goats and all sheep over 18 months old must be tagged. Records on tagged animals must be maintained for five years.

Certificates of veterinary inspection (CVIs) must be obtained whenever animals change ownership, other than when sold for slaughter. A sexually intact animal cannot be moved from an infected or

source flock, except under permit. Permitted animals may be moved to slaughter, to a research or diagnostic facility, or to another facility as specified in the flock plan. Infected flocks will be quarantined by the department and written flock cleanup plan must be implemented. The plan may consist of flock depopulation; removal of genetically susceptible female animals, suspect animals, positive animals, and the female offspring of positive female animals; or the removal of high-risk animals. An indemnity may be available through the USDA. Indemnity may be paid for animals removed, if funds are available through USDA.

EDUCATION DEPARTMENT

11:00

Open enrollment, IAB Vol. XXVI, No. 23, ARC 3331B, NOTICE.

The department proposes an update to its provisions relating to open enrollment. These rules were last significantly revised in 2002. The most important amendments to this proposal result from 2003 Acts, Ch. 130, §35 which requires the department to adopt criteria and standards that school districts must follow when developing a voluntary desegregation plan, as well as a review process. Districts must comply by 2006. Under these rules a school district may adopt a voluntary desegregation plan that affects open enrollments if:

- The total student population has at least 20 percent minority students; or
- The percentage of minority students in one or more attendance centers exceeds the percentage of minority students in the district as a whole by at least 20 percentage points.

Restricting open enrollment may only be used as one component of a broader plan to increase desegregation. The open enrollment component may only be used while minority enrollment exceeds 15 per cent.

A desegregation plan must set a district wide ratio of minority-to-nonminority students which is to be maintained. If a district has multiple attendance centers, a ratio must be established for each center. All open enrollment requests must be evaluated on whether the request will adversely

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affect or will positively affect the implementation of the plan.

EDUCATION DEPARTMENT

11:00

Educating the homeless, IAB Vol. XXVI, No. 23, ARC 3331B, NOTICE.

These rules were first enacted in 1989; this proposal is the first revision. Under the existing rules local districts are required to locate and identify homeless children or youth of school age who are found within the district, whether or not they are enrolled in school. The district must then "encourage" them to enroll in the public school.

The revisions implement federal requirements set out in 42 USC §11431 and following sections. The federal law requires that:

Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

* * *

Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

The proposal first adds detail to the definition of "homeless" by providing examples of living or sleeping arrangements that constitute being homeless. The proposal goes on to prohibit a homeless student from being segregated from other students. It also require a homeless student to immediately enrolled regardless of any pending jurisdictional disputes, with placement based on the best interest of the child.

In addition, each district must provide a staff liaison to:

- Ensure that a homeless child or youth is identified is enrolled in, and has a full and equal opportunity to succeed in, schools of the district;
- Ensure that eligible homeless families, children, and youth receive educational services, including Head Start and Even Start programs, tuition-free preschool programs administered by the district, and referrals to

health care services, dental services, mental health services, and other appropriate services;

- Ensure that the parents or guardians of homeless children and youth are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive other community services;
- Ensure that any disputes are mediated according to federal law and that the child or youth is enrolled pending resolution of the dispute;
- Ensure that transportation services are available on a comparable basis that transportation is available to other students;
- Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

ENGINEERING BOARD

1:30

Services provided by a professional engineer, IAB Vol. XXVI, No. 23, ARC 3342B, NOTICE.

The board proposes a new rule outlining the circumstances where the use of a professional engineer is required in building construction and the alteration of existing structures. The rules set out guidelines for the type of work requiring a professional engineer and guidelines to determine when an unlicensed individual is engaged in the practice of engineering.

The proposal sets out a convenient, detailed three column chart; the first column defining the type of use, the second establishing the size of the structure and the third indicating whether the services of a professional engineer is required. Basically, agricultural structures, commercial structures under 10,000 square feet, churches smaller than 2000 square feet and residential uses of 12 units or less (up to three stories) do not need the services of a professional engineer.

ENVIRONMENTAL QUALITY DIVISION

11:15

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Electronic recycling, IAB Vol. XXVI, No. 23, ARC 3358B, NOTICE.

§455D.6(7), 2003 supplement, requires the division to develop "...a strategy for the recycling of electronic goods and the disassembling and removing of toxic parts from electronic goods." This proposed regulatory program establishes an electronics recycling program. Electronic recycling falls into three categories: short-term events, collection facilities and recycling facilities. A short term event is simply a collection event where the items are transported to a recycling facility. It is subjected to minimal regulation; event sponsors must work with and transport all discarded electronics to a properly permitted electronics recycler. Any glass from a monitor or a damaged or leaking monitor must be collected in enclosed and separate containers from other discarded electronics and be protected from precipitation. All litter must be contained.

A collection and recycling facility must obtain a permit, unless it is located as part of a permitted recycling or composting facility or a sanitary disposal project. Permits are valid for up to three years. A collection facility must operate in a manner that minimizes hazardous conditions and have the equipment and emergency procedures to deal with any hazardous condition that occurs. The electronic components must be collected and contained in a manner that is structurally adequate to prevent breakage and spillage. Any glass from a monitor or a damaged or leaking monitor must be collected in an enclosed and separate container away from other discarded electronics and protected from precipitation. For both collection and recycling facilities, materials cannot be "speculatively accumulated". At least 75 per cent of the materials entering the facility must be removed within 12 months

A recycling facility must be enclosed by walls, a roof, and a floor; it cannot be located in a 100 year flood plain. A recycling facility must store materials in a manner designed to minimize risk; materials must be transported in clearly marked containers. Special handling standards are set out

for PCB capacitors, CRT tubes, batteries, circuit boards and mercury-containing materials. All employees must be trained in the proper handling of electronic materials and at least one employee must have completed a department training course.

Each recycling facility must prepare a detailed emergency response and remedial action plan (ERRAP) which detail the facilities response to a variety of disasters or emergency conditions that might arise.

ETHICS BOARD

1:40

Miscellaneous revisions, IAB Vol. XXVI, No. 23, ARC 3348B-3351B, ADOPTED; ARC 3355B, NOTICE.

The board adopts several new provisions relating to the treatment of debts and loans by a candidate or a candidates committee. In all cases the debt must be repaid to the lender along with all required public disclosures. The proposal clarifies that a "permanent organization" (i.e.: political party or an interest group) can loan money to a candidate or a committee without being deemed to be engaged in political activity requiring registration. The rules also clarify that campaigns can transfer assets between one another, as long as the fair market value of those assets is paid and the transactions are reported.

The rules also allow a financial institution to make loans to candidates or committees. In addition, a candidate or committee may owe a debt to a corporation, financial institution or insurance company. This provision is significant because §68A.503, 2003 Supplement, specifically prohibits an insurance company, savings and loan association, bank, credit union, or corporation from making a campaign contribution. This rule makes it clear that a bona fide loan is not a contribution.

Other changes clarify that it is permissible to use campaign funds to buy small presents or provide cash bonuses for campaign workers or employ family members as paid workers.

The provisions relating to "independent expenditures" are also re-written. These are expenditures by an entity that is not a candidate or

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committee that specifically advocates a position in an election. §68A.404 requires that any expenditure in excess of \$750 be reported. Those reporting requirements are set out specifically in the rule.

A new requirement is added relating to executive branch reporting. Pursuant to §68B.38 persons who lobbies before the executive branch of government must file a report with the board containing information on all salaries, fees, and retainers paid by the lobbyist's client to the lobbyist for lobbying purposes. The new rule requires that the report be filed even if the actual amount is zero for the period.

The board also proposes a change relating to allowable donations to charitable organizations, from a campaign fund. In response to a specific situation House File 2318 was enacted to prohibit contributions to a charity which employs the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent and who will receive a direct financial benefit from a donation.

NATURAL RESOURCES DEPARTMENT

11:30

The nature store, IAB Vol. XXVI, No. 23, ARC 3357B, NOTICE.

The department proposes a commercial venture to market natural resource related merchandise to the public. It is both a revenue raising tool and a means to promote natural resources activities to the public.

This proposal must be considered in light of Iowa Code §23A.2(1) which in part states:

A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

* * *

a. Engage in the manufacturing, processing, sale, *offering for sale*, rental, leasing, delivery, dispensing, distributing, or advertising *of goods or services to the public which are also offered by private enterprise* [emphasis added]

Note this provision does not automatically prohibit this type of operation (the historical society operates a gift shop); the question must be answered whether the merchandise is currently offered by private enterprise and whether the shop would encroach on that private enterprise operation..

PUBLIC HEALTH DEPARTMENT

2:30

Lead paint hazards, IAB Vol. XXVI, No. 24, ARC 3373B, NOTICE.

Iowa Code §135.102, calls for the adoption of model regulations for lead hazard *remediation* in situations where a child is confirmed as having been lead poisoned. This requirement was enacted in 2001 and is now being implemented through rulemaking. This new regulatory program is applicable only in local jurisdictions where the local board of health has adopted these rules. Buildings subject to this program would include residences, day care centers, preschools and kindergarten classrooms where a child under six years of age would spend an extended period of time.

When a child under six is determined to have an elevated blood level (EBL) the local board of health is required to any inspect residential dwelling and child-occupied facility where the child lives, visits, or has recently lived. Building owners and occupants are required to allow the inspection; search warrants may be obtained as required to compel access. If a lead hazard is discovered the owner is required to remediate that risk. The rules call for simple and cost effective methods of remediation such as re-painting, scraping and painting of a through washing. Methods that might release lead vapors or dust are prohibited.

The owner is prohibited from retaliating or discouraging a person from being tested. If an owner does take action to exclude or event a person, the owner must be able to show that the action is supported by reasonable cause unrelated to the testing of an occupant for lead poisoning.

PROFESSIONAL LICENSURE

DIVISION

9:20

Physician supervision of a physician assistant, IAB Vol. XXVI, No. 23, ARC 3345B, ADOPTED.

In House File 628, enacted in 2003, the legislature made a number of changes to Iowa Code Chapter 148C. §12 of the Act provides the following:

Sec. 12. PHYSICIAN ASSISTANTS == RULES. The board shall adopt new rules pursuant to chapter 17A to administer chapter 148C, after consultation with the board of medical examiners, later than January 1, 2004. The rules shall be designed to encourage the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa through better utilization of available physicians and the development of sound programs for the education and training of skilled physician assistants well qualified to assist physicians in providing health care and medical services.

§9 of the Act completely re-wrote Code §148C.3, relating to registration and licensure. In that re-write statutory language was deleted which required the physician assistant applicant and the supervising physician or physicians to provide a description of how the physician assistant is to function within the "scope of practice."

Pursuant to these statutory revisions the physician assistant board now amends a number of existing rules generally relating to the physician assistant's practice; and more specifically relating to the relationship between the supervising physician and the physicians assistant. The supervising physician at all times remains responsible for the professional actions of the physicians assistant.

Concerning the delegation of duties by the supervising physician, the prior rule provided that "diagnostic and therapeutic medical tasks common to the physician's practice" could be delegated to the physician assistant; under the new language the delegated tasks do not need to be common to the physician's practice as long as the physician assistant demonstrates proficiency and competence in that area, as determined by the supervising

physician. It should be noted that the Board of Medical Examiners does maintain a rule stating that a supervising physician may be subject to board discipline if the physician "does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized." [653 IAC 21.4]

The revisions also allow broader practice by physician assistants. For example, prior rules allowed the assistant to perform "*office* [italics added] surgical procedures"; the revision eliminates the reference to office procedures and thus would allow the assistant to perform surgical procedures with no reference to location. The rule does retain a non-exclusive list of minor surgical procedures, but they provide examples, not limitations.

The rule has also changed in the area of obstetrical care. The previous rule stated that the physician assistant provided prenatal and postnatal care and assisted a physician in obstetrical care. The reference to assisting the physician has been deleted, allowing the assistant to provide obstetrical care as delegated by the supervising physician.

The filing also re-writes existing provisions relating to remote clinics; i.e., clinics when the physician does not regularly practice. The revisions are substantially similar to the existing provisions, requiring a greater degree of supervision for assistants who have less than one year of practice.